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August 1, 2001

## Via Federal Express Overnight Mail

## CONFIDENTIAL AND INADMISSIBLE SETTLEMENT COMMUNICATION

Annette M. Lang  
U.S. Department of Justice  
1425 New York Avenue, N.W.  
Room 13073  
Washington, DC 20005

**Re: Skinner Landfill Case: Acme Wrecking Company, Inc. ("Acme")**

Dear Annette:

Enclosed are the following documents concerning the volumetric issue:

1. Preliminary Allocation Report and Recommendations dated October 6, 1998
2. Acme's Initial Comment Brief with attached affidavits.
3. Final Allocation Report and Recommendations dated April 12, 1999
4. Letter dated November 8, 1999 from Santen & Hughes to Carl Bourdeau and Michael O'Callaghan
5. Letter from Santen & Hughes dated February 13, 2001 to Craig Melodia
6. Letter from Santen & Hughes dated April 3, 2001 to Craig Melodia

The essence of Acme's position is that the Nexus materials submitted to Acme indicated that they paid a total of \$912.00 in dumping fees at Skinner Landfill during the years 1965 - 1968. There are no other records indicating that Acme used the Skinner Landfill after 1968.

Acme's use of the landfill was to dump debris from demolition jobs. This generally consisted of wood and concrete, and did not include liquids, dirt, asbestos or scrap metal.

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Annette M. Lang  
August 1, 2001  
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The Allocator's reports extrapolate a much longer and larger usage of Skinner Landfill by Acme based on some unreliable testimony in certain depositions by deponents who said they saw "Acme" trucks at the site. As set forth in Acme's Initial Comment Brief, there were numerous companies in Cincinnati doing business under the name of Acme, many of whom would have hauled construction debris, such as: Acme Brick & Stone, Acme Construction Products, Inc., Acme Remodeling and Contracting, to mention a few. None of these companies had any relationship to Acme.

The Allocator estimated that Acme dumped 2,280 cys during the period 1965-1968, and another 50 loads per year for five (5) years (3,750 cys). Acme disputes both volumes but, in an effort to settle the case, Acme has made a settlement proposal that acknowledges the full volume estimated by the Allocator for 1965-1968 (2,280 cys), but disregards any volumes for periods thereafter since there is no credible evidence to show dumping after 1968. The Allocator's proposed amount of liability is \$136,000. If Acme acknowledges dumping 2,280 cys out of 6,030 cys, or 37.8%, the amount of liability reduces to \$51,408 ( $\$136,000 \times 37.8\%$ ). Acme has offered to settle for \$50,000, payable in four quarter-annual installments of \$12,500 each.

Please let me know if this proposal is acceptable.

Sincerely,



Charles M. Meyer

CMM:bae  
Enc.

### **ACME WRECKING COMPANY, INC. ("ACME")**

Acme is a demolition company located at 3111 Syracuse Street in Cincinnati. It was incorporated in 1964. The company stated that in the 1960s it was a small company that demolished primarily residential structures. It also identified two commercial jobs it had in the late 1960s: (1) a former Procter & Gamble headquarters building; and (2) a former Greyhound bus station. Acme said it would not have used Skinner for these jobs because the debris would have gone to a local landfill. The Skinner log has entries for Acme in the years 1965 - 1968. Acme claimed that it had no reason to believe it used the Skinner site in other years. Acme did not locate any records regarding disposal at Skinner.

**Type of Waste.** Acme claimed that it would only have taken demolition debris to Skinner and only when it was doing a job in the vicinity of Skinner. It stated that, in the 1960s, all of Acme's operations in the vicinity of Skinner involved only the demolition of residential structures. The debris would consist mainly of wood and concrete. Acme required its customers, the property owners, to remove all interior furnishings prior to demolition. It also claimed that it would never work on a demolition job unless the owner removed any asbestos containing materials first, and that this has been true since the founding of the company. At times, it would subcontract out this work for the owner. Also, Acme claimed that it separated out all metal, including piping and tanks, and sold it to scrap dealers. It never sold scrap metal to Skinner because it could get better prices from others. It identified Frank Adams Company, Mose Cohen, Liberty Scrap and American Scrap as the places it took scrap in the late 1960s. Acme stated it never transported tanks or containers which contained materials. It required the owner to have the container emptied, purged and ventilated. Acme would then cut the tanks into pieces with a torch and take the pieces to scrap dealers. Acme never transported liquids such as paint, paint thinners, or waste oil. The company claimed it did not haul or dispose of asphalt, paint or paint thinners or waste oil. Acme claimed that its trucks were not equipped to haul, and did not haul, liquids or dirt, although some dirt inevitably mixed in with the debris.

It does not appear that Acme performed a thorough investigation into its possible use of the site during years other than 1965 - 1968. Acme limited its investigation to the years 1965 - 1968, the time frame its name appears in the Skinner log. Acme said it had only 4 employees during those years. The chief executive officer, S. John Smith, was the only person interviewed for the questionnaire responses. The other three employees during this time period were drivers who are deceased.

As to Acme's asbestos argument, it is doubtful that a residential demolition contractor in the 1960s was having asbestos removed through an asbestos abatement contractor. Acme's argument that it has always required asbestos removal to be undertaken separately going back to 1964 is based on the recollection of Mr. Smith. While I can believe that Acme has been following this practice for a very long time, I do not believe that on a full discovery record Acme would persuade a federal district court judge that it has done so since 1964.

Asbestos is not required to link Acme to a hazardous substance, however. Residential construction debris contains hazardous substances, as discussed above. The paint alone on demolition debris would contain a hazardous substance. Acme admits to disposing of painted wall board.

Waste-in List in Solid Waste Volume Order for the Preliminary Allocation Report and Recommendations, Skinner  
Landfill Superfund Site, October 6, 1998

	Solid	Liquid	Solid Waste		Liquid Waste	
	Waste In	Waste In	In Total	Percentage	In Total	Percentage
Name Of Party	Cys	Gallons	Cys		Gallons	

ACME WRECKING	13530	0	363690	3.7202%	259308	0.0000%
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Waste-in List in Liquid Waste Volume Order for the Preliminary Allocation Report and Recommendations, Skinner  
Landfill Superfund Site, October 6, 1998

	Solid	Liquid	Solid Waste		Liquid Waste	
	Waste In	Waste In	In Total	Percentage	In Total	Percentage
Name Of Party	Cys	Gallons	Cys		Gallons	

ADME WRECKING	13530	0	363690	3.7202%	259308	0.0000%
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Waste-In List for the Preliminary Allocation Report and Recommendations, Skinner Landfill Superfund Site, October 8, 1998

		Amount or Capacity	Compaction or Multiplier or Divisor	Frequency or loads		Years 1 is the default	Solid Sub Total	Liquid Sub total	Solid Total Cys	Liquid Total Gals	Response Cost Dollar Credit	Solid Waste In Total	Percentage
PRA	Source				Wk/Mo/Yr							363690	
	ACME WRECKING Witnesses	15	1	50	1	15	11250					363690	0.0000%
	ACME WRECKING Log	15	1	152	1	1	2280					363690	0.0000%
ACME WRECKING									13530			363690	3.7202%

## 1

Skinner Landfill would have been significantly less than 152 loads. Moreover, there is no evidence that any of the demolition debris delivered by Acme contained hazardous substances.

Based on the facts discussed herein, the Affidavit of Schuyler J. Smith which is attached hereto as Exhibit A and incorporated herein by reference ("Smith Affidavit"), and the Affidavit of Terri Leahr which is attached hereto as Exhibit B and incorporated herein by reference ("Leahr Affidavit"), Acme requests that the determinations regarding Acme in the Preliminary Report be revised to more accurately reflect the nature and extent of Acme's activities at the Skinner Landfill.

## **II. ACME DID NOT DISPOSE OF ANY MATERIAL AT THE SKINNER LANDFILL BETWEEN THE YEARS 1975 AND 1989**

The Preliminary Report suggests that Acme delivered 50 loads of demolition debris per year to the Skinner Landfill from 1975 through 1989. (Preliminary Report, Appendix 1, at 6.) This determination is in conflict with the Skinner accounting log, which indicates that Acme paid dumping fees at Skinner only during the years 1965-1968. This determination is also directly refuted by the information contained in the Smith Affidavit and the Leahr Affidavit, and by the deposition testimony of Elsa Skinner-Morgan.

The Preliminary Report speculates that Acme did not perform a thorough investigation into its possible use of the Skinner Landfill during years other than 1965-1968. (Preliminary Report, Appendix 1, at 5.) The truth, however, is that Acme has fully investigated its possible use of the Skinner Landfill for the period 1968-1989. (Leahr Affidavit ¶ 2.) Acme attempted to investigate its use since the time the company was incorporated in 1964, but was unable to locate any records for the years prior to 1968. (Leahr Affidavit ¶ 2.) In the course



of this investigation, Acme reviewed every one of its files for the period 1968-1989. (Leahr Affidavit ¶ 2.) The files which Acme reviewed contain contracts, receipts, dump tickets, and other documentation for every job that Acme performed during that time period. (Leahr Affidavit ¶ 2.) As a result of this search, Acme has compiled a list of all of the landfills to which Acme delivered its demolition debris during the years 1968-1989. This list is contained in the Leahr Affidavit. (Leahr Affidavit ¶ 3.) As the Leahr Affidavit indicates, this extensive and complete search of Acme's records did not reveal a single item relating to the Skinner Landfill. (Leahr Affidavit ¶ 4.) There was not a single letter, contract, dump ticket, invoice, receipt, or any other writing or document which indicates that Acme delivered any materials to the Skinner Landfill or had any other contact with the Skinner Landfill during the years 1968-1989.

This search of Acme's records is complemented by the Affidavit of Schuyler J. Smith, the founder and chief executive officer of Acme. As Mr. Smith explains, Acme was incorporated in 1964. (Smith Affidavit ¶ 2.) Acme transported materials to the Skinner Landfill in the mid- to late-1960s, but only on the rare occasions when it was working on a job near the Skinner Landfill. (Smith Affidavit ¶ 3.) Mr. Smith does not recall Acme ever taking any debris to the Skinner Landfill other than in the mid- to late-1960s. (Smith Affidavit ¶ 7.)

The information contained in the Leahr and Smith Affidavits is substantiated by the Skinner accounting log entry summaries that were sent to Acme prior to the commencement of the pending litigation. The accounting log entries indicate that Acme paid \$25.00 in dumping fees at the Skinner Landfill in 1965, \$215.00 in 1966, \$588.00 in 1967, and \$84.00

in 1968.<sup>1</sup> In total, the accounting log entries indicate that Acme paid \$912.00 in dumping fees at the Skinner Landfill during the years 1965-1968. The accounting log entries indicate that Acme did not pay any dumping fees at the Skinner Landfill in years other than 1965-1968.

The fact that Acme did not use Skinner after 1968 is further substantiated by the deposition testimony of Elsa Skinner-Morgan in the instant case:

Q Now, is there any way to determine whether Acme Wrecking brought waste to the site, other than what is reflected in the log?

A No.

Q You don't know of a way to do that?

A No. I don't think they did.

Q Why is that?

A I would have been told about it, I guess. I would have billed them.

(Elsa Skinner-Morgan depo. (Nov. 19, 1997) at 199.)

Despite this substantial evidence to the contrary, the Preliminary Report suggests that Acme delivered 50 loads of demolition debris to the Skinner Landfill each year from 1975-1989. This conclusion is based on the deposition testimony of various witnesses who claim that they saw Acme's trucks at the Skinner Landfill during that period. However, the testimony of each of these witnesses contains factual assertions which indicate that the trucks which they saw did not belong to Acme.

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<sup>1</sup>As explained previously, the Leahr Affidavit indicates that Acme was unable to locate any records which indicate that Acme sent materials to the Skinner Landfill in 1968. This statement would seem to be in conflict with the Skinner accounting log, which indicates that Acme did, in fact, pay dumping fees at Skinner in 1968. However, as noted above, Acme's records do not begin until sometime in 1968 and therefore probably do not fully reflect Acme's activities in 1968.

For example, the Preliminary Report appears to place considerable weight on Ray Skinner's testimony that Acme dumped 50 loads per year at Skinner during a ten-year period in the 1970s and 1980s. (Preliminary Report, Appendix 1, at 6.) Mr. Skinner testified that Acme used dump trailers with a capacity of at least 40 to 60 cubic yards. (Ray Skinner depo. (Feb. 17, 1998) at 906.) Rodney Miller, who testified that he saw Acme trucks at the Landfill during a five-year period in the late 1970s and early 1980s, similarly testified that the trucks which he thought belonged to Acme were 60-cubic yard trailers. (Rodney Miller depo. at 56.) However, as the Smith Affidavit indicates, Acme has never owned 40- to 60-cubic yard trailers, or any trailers even close to that size. (Smith Affidavit ¶ 8.) Acme did not purchase its first 30-cubic yard trailers until the late 1980s, and Acme has never had a trailer larger than 30 cubic yards to this day. (Smith Affidavit ¶ 8.) Whatever Mr. Skinner and Mr. Miller may have seen, it is clear that they did not see trucks which belonged to Acme.

Rodney Miller's deposition testimony contains an interesting remark which may explain why certain witnesses claim to have seen "Acme" trucks at the Skinner Landfill. In response to questions by the Allocator, Mr. Miller stated that he saw "Acme" trucks at the Skinner Landfill. (Rodney Miller depo. at 53.) However, later in the deposition, Mr. Miller stated that the trucks which he saw were connected with "Acme Construction":

Q . . . Do you know anything about Procter & Gamble?

A It would be connected with Acme Construction, if it was anything came out to Skinners'.

(Rodney Miller depo. at 180 (emphasis added).)

In the late 1970s and early 1980s, the period covered by Rodney Miller's testimony, there was a company in Cincinnati doing business under the name of "Acme Construction

Products, Inc." This company was located at 1774 Westwood Avenue and had no affiliation whatsoever to Acme Wrecking Co. Inc. (Smith Affidavit ¶ 9.) Indeed, there were a number of companies in Cincinnati between the years 1975-1989 whose names began with "Acme." For instance, the 1976 Cincinnati City Directory contains listings for the following companies whose names begin with "Acme":

Acme Brick & Stone  
5912 Hamilton Avenue

Acme Cleaners  
1409 Main Street

Acme Cleaning Service  
6106 Ridge Avenue

Acme Construction Products, Inc.  
1774 Westwood Avenue

Acme Fast Freight, Inc.  
1400 Gest Street

Acme Hardware Co.  
112 W. Elder Street

Acme Lock Service  
139 E. Court Street

Acme Muffler Service  
7444 Vine Street

Acme Odorless Cleaners  
4923 Paddock Road

Acme Remodeling & Contracting  
1026 Clearbrook Drive

Acme Sash & Door  
1250 Tennessee Avenue

Acme School Supply  
1242 W. Mehring Way

Acme Service Co.  
2212 Gilbert Avenue

Acme Telephone Answering Service  
226 E. 8th Street

Acme Tinning & Lead Coating  
1126 Marshall Avenue

Acme Typewriter Service  
16 Court-Ninth Arcade

Acme Wrecking Co.  
3111 Syracuse Street

The 1976 Cincinnati Suburban Directory contains the following listings under the name

"Acme":

Acme Millwright Co.  
8560 Voorhees Lane

Acme Research Products  
5242 Crookshank Road

Acme Upholstering & Decorating Co.  
7132 Montgomery Road

There were similarly a large number of companies doing business under the name "Acme" during the later years of Acme Wrecking's alleged presence at Skinner. For instance, the 1985 Cincinnati City Directory lists the following:

Acme Cleaners  
1409 Main Street

Acme Cleaning Service  
6106 Ridge Avenue

Acme Construction Products, Inc.  
1774 Westwood Avenue

Acme Glass Co., Inc.  
537 Livingston Street

Acme Lock, Inc.  
139 E. Court Street

Acme Remodeling & Contracting  
1026 Clearbrook Drive

Acme Sash & Door  
1250 Tennessee Avenue

Acme Telephone Answering Service  
226 E. 8th Street

Acme Tinning & Lead Coating  
1126 Marshall Avenue

Acme Wrecking Co.  
3111 Syracuse Street

The 1985 Cincinnati Suburban Directory contains the following listings:

Acme Cleveland Group  
4460 Lake Forest Drive

Acme Fab  
11337 Williamson Road

Acme Realty  
9864 Belleford Court

Acme Research Products  
5242 Crookshank Road

Acme Scale Service  
4429 Poole Road

It is conceivable that any of the aforementioned companies could have had vehicles bearing the name "Acme." It is particularly likely that companies such as Acme Construction

Products, Inc., Acme Fast Freight, Inc., and Acme Remodeling & Contracting would have had trucks bearing the "Acme" name. It is very possible that these trucks could have been present at the Skinner Landfill at various times during the 1970s or 1980s, and that witnesses could have seen the name "Acme" and mistakenly assumed that these trucks belonged to Acme Wrecking Co. Inc. This possibility seems very likely when one considers Rodney Miller's testimony in which Mr. Miller, without any prompting, specifically referred to the company as "Acme Construction."

This possibility of confusion and mistaken identity could very well explain the testimony of the other witnesses who claim to have seen "Acme" trucks at the Skinner Landfill between 1975 and 1989. When one closely examines the testimony of these witnesses, one discovers that none of these witnesses specifically linked Acme Wrecking Co. Inc. to the Landfill during those years. Richard Clarke testified that he saw trucks at the Landfill with an "Acme" sign on the side.<sup>2</sup> Roger Ludwig likewise saw trucks with the word "Acme" on the side and assumed that the trucks belonged to Acme Wrecking Co. Inc.<sup>3</sup> Lloyd

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<sup>2</sup>Richard Clarke testified:

- Q Can you describe the vehicle at all?  
A Just be a guess.  
Q Okay. Well, how do you know it came from Acme.  
A Well, the sign.  
Q Pardon me?  
A The sign was on the side.

(Richard Clarke depo. at 170-71.)

<sup>3</sup>Roger Ludwig testified:

- Q How do you know they were from Acme Wrecking?  
A They would say Acme on it.

Gregory never testified that he actually saw Acme's trucks at the Landfill. He linked Acme to the Landfill by describing off-site activities which Acme does not even perform.<sup>4</sup>

There are perhaps other explanations for the testimony of the witnesses who claim to have seen Acme's trucks at the Landfill between 1975 and 1989. It is possible that some of these witnesses saw Acme's trucks at locations other than the Skinner Landfill, but now mistakenly believe that they were at the Landfill when they saw the trucks. Acme was a growing company in the 1970s and 1980s, and it would not have been uncommon for others in the industry to have seen Acme's trucks at other locations.

In short, there are a number of very plausible explanations for the testimony of the witnesses who claim to have seen "Acme" trucks at the Skinner Landfill between 1975 and

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Q So you saw the name?

A And, of course, you've seen Elsa's logs or receipts or something and you would see Acme Wrecking would correspond with that.

(Roger Ludwig depo. at 238-39.)

<sup>4</sup>Lloyd Gregory testified:

Q Okay. Now, how do you know they came from Acme?

A Ray was -- had some work done with them. He was doing some work with them, hauling for them, demolition.

Q For example, how -- did a vehicle come in, a truck come in with demolition waste on it?

A No, no. Ray hauled it in there from Acme.

Q So Ray hauled it?

A For them, yes.

Q How do you know what Ray brought in came from Acme?

A Because they were cleaning the bricks. They had bricks out of an old building they were cleaning.

(Lloyd Gregory depo. at 54.) As noted in the Smith Affidavit, Acme has never cleaned bricks. Acme has always contracted with third parties, generally Star Used Building Material, to clean bricks from Acme's demolition projects. (Smith Affidavit ¶ 10.)



1989. Yet, regardless of what ultimately explains the testimony of these witnesses, the fact remains that they could not have seen trucks which belonged to Acme at the Skinner Landfill between 1975 and 1989. Acme simply did not transport its debris to the Skinner Landfill during those years. The personal recollections of Acme's chief executive officer support this conclusion. Acme's review of its records supports this conclusion. And the Skinner accounting log supports this conclusion.

Acme finds itself in the position of having to prove that it had no involvement at the Skinner Landfill during the years 1975 through 1989. In any context, it is almost impossible to prove that a certain event did not occur. This is particularly true where the events in question allegedly occurred between 10 and 25 years ago, and where there has been no opportunity to directly question the witnesses who claim that the events occurred. However, when one considers as a whole the Smith Affidavit, the Leahr Affidavit, the Skinner accounting log, the fact that certain witnesses linked Acme to the Landfill by describing trucks significantly larger than any trucks that Acme has ever owned, the existence at the same time of numerous other companies which operated under the name "Acme," and the reference by Rodney Miller to a wholly unrelated company, such evidence taken together compels the conclusion that Acme did not have any connection to the Skinner Landfill between 1975 and 1989. There is no logical basis for concluding otherwise. Accordingly, Acme requests that the recommendations in the Preliminary Report be altered to reflect that Acme did not dispose of any waste at the Skinner Landfill during these years.

### **III. THE PRELIMINARY REPORT OVERSTATES ACME'S LIABILITY FOR ITS ACTIVITIES AT THE SKINNER LANDFILL BETWEEN 1965 AND 1968**

The Preliminary Report suggests that Acme delivered 152 loads of demolition debris to the Skinner Landfill between 1965 and 1968. This determination is based upon the Skinner Landfill accounting log, which indicates that Acme paid a total of \$912.00 in dumping fees at the Skinner Landfill during the years 1965 through 1968, and upon the assumption that the dumping fee at the Landfill during those years was \$6.00 per load. The conclusions in the Preliminary Report assume that a full truckload would contain 15 cubic yards, which accurately reflects the capacity of Acme's trucks at that time. (Smith Affidavit ¶ 8.)

Acme was unable to locate any records for years prior to 1968, but concedes that it did transport demolition debris to the Landfill in the mid- to late-1960s. Acme does not, however, concede that the debris which it disposed at the Skinner Landfill contained hazardous substances.

The conclusions in the Preliminary Report are based upon at least two critical assumptions, either or both of which may be inaccurate. First, the Preliminary Report assumes that every single delivery contained a full truckload. Although Acme cannot specifically refute this assumption, it seems that, in fairness, some reduction in Acme's allocation is warranted based on the very logical possibility that at least some of the deliveries contained less than a full truckload. Second, the Preliminary Report also assumes that every load of debris delivered by Acme contained hazardous substances. Yet, no direct evidence has been presented in this action which establishes that Acme ever transported or disposed of hazardous substances at the Skinner Landfill.

Although Acme concedes that it disposed of demolition debris at the Skinner Landfill in the 1960s, there is no evidence that this demolition debris contained hazardous substances. Acme transported materials to the Skinner Landfill only on the rare occasions when it was working on a job near the Skinner Landfill. (Smith Affidavit ¶ 3.) In the 1960s, all of Acme's operations in the vicinity of the Skinner Landfill involved the demolition of residential structures. (Smith Affidavit ¶ 3.) Any debris that was taken to the Skinner Landfill would have come from these residential structures. (Smith Affidavit ¶ 3.)

The demolition debris generally consisted of wood and concrete. (Smith Affidavit ¶ 4.) Acme required the owners of the property to remove all interior furnishings prior to demolition. (Smith Affidavit ¶ 4.) Acme also required the owners to remove any containers containing liquids. (Smith Affidavit ¶ 4.) Acme never transported liquids, such as paint, paint thinners, or waste oil, because its trucks are not designed or equipped to transport liquids. (Smith Affidavit ¶ 4.)

Likewise, Acme never transported tanks or containers which contained materials. (Smith Affidavit ¶ 5.) If Acme discovered any tanks or containers inside a property, they required the owner to have the containers emptied, purged, and ventilated. (Smith Affidavit ¶ 5.) Acme would then cut the tanks into pieces with a torch. (Smith Affidavit ¶ 5.) The remnants were then transported to one of the local scrap dealers. (Smith Affidavit ¶ 5.) Acme never transported scrap metal to the Skinner Landfill because Acme received better prices from other scrap dealers. (Smith Affidavit ¶ 5.) During the late 1960s, Acme transported scrap metal to Frank Adams Company, Mose Cohen, Liberty Scrap, and American Scrap. (Smith Affidavit ¶ 5.)

No evidence has been presented at any stage in this action which indicates that Acme ever transported or disposed of hazardous materials at the Skinner Landfill. The Preliminary Report speculates that the demolition debris delivered by Acme must have contained hazardous substances, but cites no direct evidence in support of this assumption. The Preliminary Report states that Acme "admits" to disposing of painted wallboard. (Preliminary Report, Appendix 1, at 5.) However, Acme has never admitted that it disposed of painted wallboard, or any other hazardous substances, at Skinner. Acme acknowledged in its Questionnaire response that painted wallboard "could have been included in the demolition debris," but that it was unable to either prove or disprove that such material would have been included in the debris that it transported to Skinner. (Acme Responses to Allocator's Follow-Up Questions, #2.)

The Preliminary Report also suggests that asbestos-containing materials were probably included in the debris that Acme transported to Skinner. Again, no direct evidence has been presented to support this conclusion. As the Smith Affidavit explains, it has been Acme's practice since the company was founded to require asbestos-containing materials to be removed from a structure prior to demolition. (Smith Affidavit ¶ 6.) The contract that Acme uses with its customers specifically requires the owner of the property to remove all asbestos-containing materials from the structure prior to demolition. (Smith Affidavit ¶ 6.) In some rare instances, a customer would ask Acme to have the asbestos-containing materials removed as part of the contract. (Smith Affidavit ¶ 6.) In those cases, Acme would contract with an abatement company to remove the asbestos. (Smith Affidavit ¶ 6.) If Acme discovered any

asbestos-containing materials during the course of demolition, Acme would contact the owner and require the owner to remove the asbestos-containing materials. (Smith Affidavit ¶ 6.)

Given the complete absence of any evidence that Acme ever disposed of hazardous substances at the Skinner Landfill, Acme cannot be held liable for any of the remediation costs incurred at the Skinner Landfill. However, even if the Allocator were to find credible evidence that some of the demolition debris transported by Acme contained hazardous substances, some allowance should be given to account for the possibility that some or many of the loads disposed of by Acme did not contain any hazardous substances.

In short, the determinations in the Preliminary Report with respect to Acme's activities between 1965 and 1968 are based upon at least two unsubstantiated assumptions which, in each case, maximize the extent of Acme's liability. No allowance has been made for the legitimate possibility that either or both of these assumptions may be untrue.

Based on the foregoing, Acme requests that the recommendations in the Preliminary Report with respect to Acme's activities at the Skinner Landfill between 1965 and 1968 be revised to indicate that there is no evidence that Acme ever transported or disposed of hazardous substances at the Skinner Landfill, and therefore Acme should have no liability for the remediation costs. In the alternative, Acme requests that the recommendations with respect to such time period be reduced to reflect the following possibilities: (i) some of the loads transported by Acme may not have contained a full 15 cubic yards of debris; (ii) it is possible that none of the loads transported by Acme contained hazardous substances; and (iii) even if some of the loads did contain hazardous substances, it is possible that other loads did not contain any hazardous substances.

#### **IV. CONCLUSION**

The Smith Affidavit, the Leahr Affidavit, the Skinner accounting log, the testimony of Elsa Skinner-Morgan, and the factual analysis contained herein clearly and compellingly demonstrate that Acme did not transport any demolition debris or other materials to the Skinner Landfill in any years other than 1965-1968. In addition, the determination that Acme delivered 152 loads to the Skinner Landfill between 1965 and 1968 is based upon at least two unsubstantiated assumptions which likely exaggerate Acme's dumping activities at Skinner during that time period. Accordingly, Acme Wrecking Co. Inc. respectfully requests that the determinations regarding Acme in the Preliminary Report be revised in the following respects in the Allocator's Final Allocation Report:

1. The Allocator's Final Allocation Report should conclude that Acme did not contribute any waste to the Skinner Landfill other than during the years 1965 through 1968.
2. The Allocator's Final Allocation Report should conclude that Acme did not contribute any hazardous substances to the Skinner Landfill during the years 1965 through 1968, and therefore has no liability for any of the remediation costs. In the alternative, Acme's liability for the years 1965 through 1968 should be based on significantly less than 152 loads, to account for the following possibilities: (i) some of the loads transported to the Landfill by Acme may not have contained a full 15 cubic yards of debris; (ii) it is possible that none of the loads transported by Acme contained hazardous substances;

and (iii) even if some of the loads did contain hazardous substances, it is possible that other loads did not contain any hazardous substances.

Respectfully submitted,



Charles M. Meyer (Ohio Reg. # 0019331)

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Trial Attorney for Defendant

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

<p><b>THE DOW CHEMICAL COMPANY, et al.</b></p> <p style="text-align: center;"><b>Plaintiffs</b></p> <p style="text-align: center;"><b>vs.</b></p> <p><b>ACME WRECKING CO., INC., et al.</b></p> <p style="text-align: center;"><b>Defendants</b></p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p><b>Case No. C-1-97-0307</b></p> <p><b>(ADR Proceeding)</b></p> <p><b>AFFIDAVIT OF SCHUYLER J. SMITH</b></p>
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The undersigned, Schuyler J. Smith, first being duly cautioned and sworn, does hereby depose and state as follows:

1. I am the founder and chief executive officer of Acme Wrecking Co. Inc. ("Acme"), a Defendant in the above-captioned case. I am over 18 years of age, am under no legal disability, and would be competent to testify to the matters set forth herein if called to do so in open court. I make this Affidavit of my personal knowledge.
2. Acme was incorporated in 1964. Acme is a small, privately-held Ohio corporation with its principal offices located at 3111 Syracuse Street, in Cincinnati, Ohio. Acme is involved in the business of residential and commercial demolition.
3. Acme transported materials to the Skinner Landfill in the mid- to late-1960s, but only on the rare occasions when Acme was working on a job near the Skinner Landfill. In the 1960s, all of Acme's operations in the vicinity of the Skinner Landfill involved the demolition of residential structures. Any debris that was taken to the Skinner Landfill would have come from these residential structures.



4. The demolition debris that Acme transported to the Skinner Landfill generally consisted of wood and concrete. Acme required the owners of the property to remove all interior furnishings prior to demolition. Acme also required the owners to remove any containers containing liquids. Acme never transported liquids, such as paint, paint thinners, or waste oil, because its trucks are not designed or equipped to transport liquids.

5. Acme never transported tanks or containers which contained materials. If Acme discovered any tanks or containers inside a property, we required the owner to have the containers emptied, purged, and ventilated. Acme would then cut the tanks into pieces with a torch. The remnants were then transported to one of the local scrap dealers. Acme never transported scrap metal to the Skinner Landfill because Acme received better prices from other scrap dealers. During the 1960s, to the best of my recollection, Acme transported scrap metal to Frank Adams Company, Mose Cohen, Liberty Scrap, and American Scrap.

6. To the best of my recollection, it has been Acme's practice since the company was founded to require asbestos-containing materials to be removed from a structure prior to demolition. The contract that Acme uses with its customers specifically requires the owner of the property to remove all asbestos-containing materials from the structure prior to demolition. In some rare instances, a customer will ask Acme to have the asbestos-containing materials removed as part of the contract. In those cases, Acme contracts with an abatement company to remove the asbestos. If Acme discovers any asbestos-containing materials during the course of demolition, Acme contacts the owner and requires the owner to remove the asbestos-containing materials.

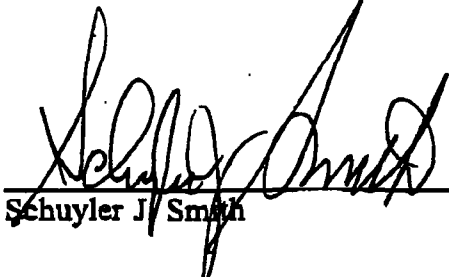
7. To the best of my recollection, Acme never transported any debris from its demolition operations to the Skinner Landfill other than in the mid- to late-1960s.

8. Acme has never owned 40- to 60-cubic yard trailers. Acme did not purchase its first 30-cubic yard trailers until the late-1980s. Acme has never had a trailer larger than 30 cubic yards. In the 1960s, the only trucks that Acme owned were 15-cubic yard tandem dump trucks.

9. I have been told that, in the 1970s and 1980s, there was a company in Cincinnati doing business under the name of "Acme Construction Products, Inc.", located at 1774 Westwood Avenue. "Acme Construction Products, Inc." was not, in any way, affiliated with Acme Wrecking Co. Inc.

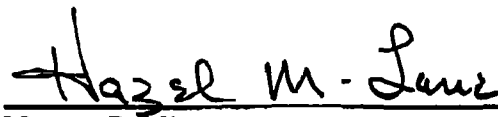
10. Acme has never cleaned bricks as part of its demolition activities. Acme has always contracted with third parties, generally Star Used Building Material, to clean bricks from Acme's demolition projects.

FURTHER AFFIANT SAITH NAUGHT.

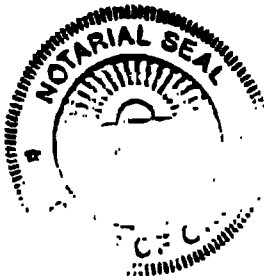
  
Schuyler J. Smith

STATE OF OHIO                    )  
  )    SS:  
COUNTY OF HAMILTON    )

The foregoing instrument was acknowledged before me this 11 day of February, 1999, by SCHUYLER J. SMITH.

  
Notary Public

#128999



HAZEL M. LANE  
Notary Public, State of Ohio  
Commission Expires Jan. 10, 2001



- 1968 Frank J. Derrick Co., 4560 Kellogg Avenue, Cincinnati, Ohio 45226
- 1969 Frank J. Derrick Co., 4560 Kellogg Avenue, Cincinnati, Ohio 45226
- 1970 H. Hafner & Sons, Inc., 3838 Pennsylvania Ave., Cincinnati, Ohio 45226
- 1971 Rumpke, Inc., P. O. Box 31004, Cincinnati, Ohio 45231  
H. Hafner & Sons, Inc., 3838 Pennsylvania Ave., Cincinnati, Ohio 45226
- 1972 Schlichter Co., Inc., 2601 Hamilton-Cleves Road, Hamilton, Ohio 45013  
William G. Scott Excavating Co., 4000 Camp Ground Rd., Louisville, KY 40211  
H. Hafner & Sons, Inc., 3838 Pennsylvania Ave., Cincinnati, Ohio 45226
- 1973 Elda, P. O. Box 16029, Cincinnati, Ohio 45216  
H. Hafner & Sons, Inc., 3838 Pennsylvania Ave., Cincinnati, Ohio 45226
- 1974 Elda, P. O. Box 16029, Cincinnati, Ohio 45216  
H. Hafner & Sons, Inc., 3838 Pennsylvania Ave., Cincinnati, Ohio 45226
- 1975 Elda, P. O. Box 16029, Cincinnati, Ohio 45216  
H. Hafner & Sons, Inc., 3838 Pennsylvania Ave., Cincinnati, Ohio 45226
- 1976 Elda, P. O. Box 16029, Cincinnati, Ohio 45216  
H. Hafner & Sons, Inc., 3838 Pennsylvania Ave., Cincinnati, Ohio 45226
- 1977 Elda, P. O. Box 16029, Cincinnati, Ohio 45216
- 1978 H. Hafner & Sons, Inc., 3838 Pennsylvania Ave., Cincinnati, Ohio 45226
- 1979 H. Hafner & Sons, Inc., 3838 Pennsylvania Ave., Cincinnati, Ohio 45226
- 1980 H. Hafner & Sons, Inc., 3838 Pennsylvania Ave., Cincinnati, Ohio 45226
- 1981 Johner, Inc., 5445 Wooster Pike, Cincinnati, Ohio 45226
- 1982 Johner, Inc., 5445 Wooster Pike, Cincinnati, Ohio 45226
- 1983 Welsh Sand & Gravel, 10217 Columbia Street, Harrison, Ohio 45030  
Niehaus Excavating & Grading, 9030 Mt. Hope Road, Harrison, Ohio 45030  
Hornsby Sand & Gravel, 7450 Dry Fork Road, Cincinnati, Ohio 45002  
R.M. Butler, Box 11059, Cincinnati, Ohio 45242
- 1984 Johner, Inc., 5445 Wooster Pike, Cincinnati, Ohio 45226

1985 Johner, Inc., 5445 Wooster Pike, Cincinnati, Ohio 45226

1986 Trey Co., 2000 Sandridge Drive, Dayton, Ohio 45439

1987 Gray Road Fill, 325 Clark Road, Cincinnati, Ohio 45215

1988 James G. Coleman, 2920 E. Galbraith Road, Cincinnati, Ohio 45237

1989 Motz, 5055 Wooster Pike  
Gray Road Fill, 325 Clark Road, Cincinnati, Ohio 45215

4. During my search of Acme's records for the years 1968-1989, I did not locate a single item relating to the Skinner Landfill.

FURTHER AFFIANT SAITH NAUGHT.

*Terri Leahr*

Terri Leahr

STATE OF OHIO )

)

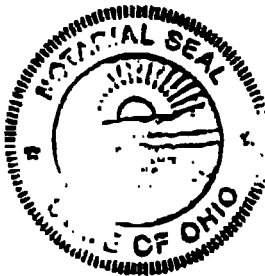
SS:

COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this 11 day of February, 1999, by TERRI LEAHR.

*Hazel M. Lane*

Notary Public



#129000

HAZEL M. LANE  
Notary Public, State of Ohio  
Commission Expires Jan. 10, 2001

**ACME WRECKING COMPANY, INC.**

Acme Wrecking Company, Inc., ("Acme") submitted a comment brief dated February 10, 1999. I am persuaded by the comment brief that the Preliminary Report's volume entry for Acme Wrecking is too high.

The Preliminary Report converted Skinner log entries into cubic yards for a time period in the late 1960s. It also accepted the testimony of a number of witnesses to which Acme had not responded on a Site nexus but discounted the volume associated with these witnesses.

As to the Skinner log entries, Acme asked that I determine that the waste in question did not contain a hazardous substance, or at least, not all of the time. I addressed the hazardous substance issue in the Preliminary Report and do not intend to revisit the subject here. For example, Acme argued that there was no evidence that the waste it hauled contained painted wall board; it merely acknowledged that the residential structures it demolished may have included painted wallboard. It strains credulity to conclude that residence structures demolished by Acme in the 1960s did not have a drop of paint on them. If Acme believes it can establish that the waste it hauled to the Skinner site did not contain a hazardous substance, it should pursue the litigation.

Acme also sought relief on the grounds that not all of its loads may have been full. I addressed this matter in the Preliminary Report as a generic protocol and see no reason to make a change here.

I did not conclude that Acme's demolition waste contained asbestos. I simply expressed the view that it is unlikely that Acme had its customers remove asbestos waste in the 1960s. Further discovery would be required to determine the presence of asbestos in the waste hauled to the Site by Acme.

Acme has reacted more persuasively to the testimonial evidence that was relied upon in the Preliminary Report to give Acme 11,250 cys of solid waste. I do believe that this figure should be reduced.

In the Preliminary Report, I recited the testimony of disposal by Acme at the Site. The time period covered by the testimony was 1975 to 1989. I used this 15 year period to compute a volume for Acme in the absence of any countervailing testimony, although I did reduce the volume. While I used a 15-year multiplier, I did not regard the evidence as necessarily meaning that Acme used the Site every year for 15 years. The time period was a component of an equation to derive a volume in a convenient way. The point is that Acme was described as a Site user beyond the late 1960s and 11,250 cys were used to quantify the testimony that covered a long period of time.

Acme has now submitted an affidavit from a witness who says he reviewed all of Acme's files from 1968 forward and could find no evidence of the use of the Site after 1968. He lists the landfills that were used. More significantly, Acme has analyzed the testimony and has suggested that a witness' description of "Acme" might not be referring to Acme Wrecking but to Acme Construction. Acme noted that Rodney Miller himself, later in his deposition, made

reference to an Acme Construction. Acme Wrecking is unrelated to Acme Construction. Acme also explained that linking its name to someone with a 60 cys trailer (as Rodney Miller did) has to be erroneous since it has never owned 60 cys trailers. (Acme also argued it was not present in the Skinner log after 1968 but I do not find that argument persuasive for reasons expressed in the Preliminary Report regarding the log. It also relied on Elsa Skinner's deposition to support its position, but I do not find Elsa Skinner's testimony to be helpful, much less, dispositive here.)

I am concerned that there may be witness confusion here as well. I cannot ignore the testimony that was given in reference to Acme Wrecking and maintain consistency with the treatment of other parties, but I am convinced by Acme's submission, as late as it may be, that the volume in the Preliminary Report is too high. I have decided to reduce Acme Wrecking's testimonial volume -- in effect to use a multiplier of 5 years, not 15 years as the means to get a waste volume from testimony -- to 3,750 cys. Hence, Acme's revised waste-in amount is 6,030 cys.

## Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

	Solid	Liquid	Solid Waste		Liquid Waste						
	Waste In	Waste In	In Total	Percentage	In Total	Percentage	Solid	Liquid	Owner/	Rest of	Total
Name Of Party	Cys	Gallons	Cys		Gallons		Waste	Waste	Operator	Chem-	
			372808		262252				& Part of	Dyne	
									Chem-Dyne		
ACME WRECKING	6030	0	372808	1.8170%	262252	0.0000%	0.16%	0.00%			0.16170%



**SANTEN & HUGHES**  
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November 8, 1999

**FOR SETTLEMENT PURPOSES ONLY -**  
**INADMISSIBLE AS EVIDENCE**

**VIA FACSIMILE - (202) 789-6190**

Karl S. Bourdeau, Esq.  
Beveridge & Diamond, P.C.  
1350 I Street, N.W., Suite 700  
Washington, D.C. 20005-3311

**VIA FACSIMILE - (614) 463-1108**

Michael J. O'Callaghan, Esq.  
Shumaker, Loop & Kendrick, LLP  
41 South High Street, Suite 2210  
Columbus, Ohio 43215

Re: Skinner Landfill case

Dear Karl and Michael:

On behalf of Acme Wrecking Co. Inc. ("Acme"), I am writing in response to the settlement offer proposed by the Skinner Landfill Work Group, as set forth in your letter dated September 20, 1999.

At the outset, let me state that Acme appreciates the Work Group's proposal and is sincerely grateful for the efforts that you and the other members of the Work Group have undertaken to bring this matter to a conclusion. Acme is very interested in resolving its involvement in this manner and hopes to conclude a settlement with the Work Group and the United States in the near future. However, for the reasons set forth in this letter, Acme is unable to agree to the specific settlement amount proposed by the Work Group.

First, Acme continues to dispute the conclusions in Mr. Barkett's Final Allocation Report. As we have asserted repeatedly throughout this process, there is no direct evidence that Acme ever delivered hazardous substances to the Skinner Landfill. Moreover, even if it could be proven that some of the materials transported by Acme contained hazardous substances, the

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John D. Holschuh, Jr.†  
Thomas D. Winkler

C. Gregory Schmidt†  
William E. Santen, Jr.  
David M. Kothman  
R. Mark Addy  
S. C. J. Winkler

Charles J. Kubicki, Jr.  
Michael G. Leik  
Lisa May Evans

Kenneth R. Hughes (1925-1993)  
†Also admitted in KY  
\*Also admitted in FL & MA

Karl S. Bourdeau, Esq.  
Michael J. O'Callaghan, Esq.  
November 8, 1999  
Page 2

conclusions in the Final Allocation Report regarding the volume of waste delivered by Acme are erroneous.

As we explained in our Initial Position Paper and Initial Comment Brief, Acme occasionally transported demolition debris from residential structures to the Skinner Landfill in the late 1960s. All of the evidence suggests that any deliveries made by Acme during this time period were minimal in terms of both frequency and volume. Acme never delivered demolition debris to the Skinner Landfill after the 1960s, and no evidence has ever been produced to suggest otherwise. Nonetheless, based on some unwarranted inferences from the deposition testimony in the ADR process, Mr. Barkett concluded in the Preliminary Allocation Report that Acme disposed of waste at the Skinner Landfill during a 15-year period from 1975 through 1989. In our Initial Comment Brief, we presented compelling evidence to refute the inferences upon which this conclusion was based. Mr. Barkett acknowledged in the Final Allocation Report that the evidence which we presented was persuasive. He significantly reduced his estimate regarding the volume of waste that Acme delivered during that time period by using a 5-year multiplier instead of the 15-year multiplier that he used in the Preliminary Allocation Report. Nonetheless, his conclusion still exaggerates Acme's total waste-in amount in that it continues to assume that Acme delivered a significant amount of waste between 1975 and 1989, an assumption that is entirely without basis.

In addition to disputing Mr. Barkett's conclusions regarding the volume of waste that Acme delivered to the Skinner Landfill, Acme questions the dollar amount upon which the Work Group's settlement offer is based. The Work Group's settlement offer is based on total cleanup costs of approximately \$21.5 million, and includes an additional 40% premium on future response costs. In our analysis, these figures are greatly exaggerated. In the Preliminary Allocation Report, Mr. Barkett estimates that the total past and future response costs for the Site will be approximately \$14,789,296.82. This amount includes a 20% contingency for future costs. Without the 20% contingency, the total past and future response costs would be approximately \$12,886,262.02, based on the numbers in the Preliminary Allocation Report. The Work Group is now estimating total response costs of \$21.5 million. With a 40% premium added to the estimated future cleanup costs of \$15.6 million, the Work Group's estimate assumes that total past and future response costs will exceed \$27 million. It seems implausible to Acme that, in the year since the Preliminary Allocation Report was issued, total response costs for the Site would have more than doubled.

Finally, even assuming that the amount demanded by the Work Group is realistic, Acme is not in a position to pay \$136,070.78 at this time. As we have indicated throughout the ADR and settlement process, Acme is a small, privately-held minority business enterprise with approximately 20 employees and annual gross revenues of approximately \$1 million to \$3 million. At this time, Acme has decided not to go through the formal exercise of providing

Karl S. Bourdeau, Esq.  
Michael J. O'Callaghan, Esq.  
November 8, 1999  
Page 3

complete "ability to pay" documentation. However, in an effort to give you a better understanding of Acme's financial condition, I have enclosed copies of Acme's financial statements for the 1998 fiscal year and for the six months ending June 30, 1999. We ask that these financial statements be kept confidential and not disclosed outside of the Work Group. Please confirm this understanding with the other members of the Work Group before distributing these financial statements to them. As these financial statements indicate, even if all of the assumptions were accurate concerning the volume of Acme's deliveries to the Skinner Landfill and the total response costs for the Site, Acme does not have the financial resources to pay \$136,070.78 at this time. An expenditure of that magnitude would seriously jeopardize Acme's ability to operate its business in a successful manner.

Although Acme is unable to agree to the specific dollar amount that the Work Group has proposed, Acme is interested in resolving its involvement in this case. To that end, Acme is prepared to offer \$50,000.00 to fully resolve its liability to the Work Group and the United States. Acme is prepared to pay \$25,000.00 as a lump-sum payment at this time, with another \$25,000.00 payment to be made on or before June 1, 2000. In consideration of this payment, all claims by the Work Group and the United States against Acme will be released, and Acme will be included in the consent decree to be lodged with the Court, as described in your letter of September 20, 1999.

We hope that the Work Group will give this proposal careful consideration, and we look forward to your response.

Sincerely yours,

SANTEN & HUGHES



Michael G. Leik

Enclosures

cc: Acme Wrecking Co. Inc.  
Charles M. Meyer, Esq.

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February 13, 2001

Craig Melodia  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 5 - 77 West Jackson Boulevard  
Chicago, IL 60604-3590  
Attn: C-14J

Re: Skinner Landfill, West Chester, Ohio

Dear Mr. Melodia:

You have requested that we produce to you certain documents out of the Allocator's preliminary and final reports concerning Acme Wrecking Co.'s ("Acme") alleged activities at the Skinner Landfill. You have also requested a copy of Acme's Initial Comment Brief.

In the discussions and correspondence which you and I have had, I have been led to believe that if we produce these documents to you, that you will keep them confidential and will use them only for purposes of attempting to settle any claims concerning Acme's activities at the Skinner Landfill. Based on this understanding, I am enclosing copies of these documents to you. I trust they are what you are looking for but, if not, let me know what else you require.

As set forth in Acme's Initial Comment Brief, Acme occasionally transported demolition debris from residential structures to the Skinner Landfill in the late 1960's. All the evidence suggests that any deliveries made by Acme during this time period were minimal in terms of frequency and volume. Acme never delivered demolition debris to the Skinner Landfill after the 1960's, and no evidence has ever been produced to suggest otherwise. Nonetheless, based on some unwarranted inferences from the deposition testimony in the ADR process, the Allocator concluded in the Preliminary Allocation Report that Acme disposed of waste at the Skinner Landfill during a 15-year period from 1975 through 1989. As you will see, compelling evidence was presented in Acme's Initial Comment Brief to refute the inferences upon which this conclusion was based. The Allocator acknowledged in the Final Allocation Report that the evidence which we presented was persuasive. He significantly reduced his estimate of the volume of waste that Acme delivered during that time period by using a 5-year

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Kenneth R. Hughes (1925-1993)  
†Also Admitted in KY  
\*Also admitted in FL & MA

Craig Melodia  
February 13, 2001  
Page 2

multiplier instead of the 15-year multiplier he used in the Preliminary Allocation Report. Notwithstanding, the conclusion in his Final Allocation Report still exaggerates Acme's total waste-in amount in that it continues to assume that Acme delivered a significant amount of waste between 1975 and 1989, an assumption that has no basis.

Furthermore, we have made it well-known throughout the ADR settlement process that Acme is a small, privately-held minority business enterprise with approximately 20 employees and annual gross revenues of approximately \$1,000,000-\$3,000,000. We believe that there is a significant "ability to pay" ("ATP") issue with respect to any proposed responsibility or liability. While we have not formally provided any ATP documentation, I wanted to make you aware of the situation because it does impact our ability to resolve this matter.

Sincerely,



Charles M. Meyer

CMM:bae  
Enc.

c: Acme Wrecking Co. (w/enc.)

bc: Mike Leik

## SANTEN & HUGHES

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April 3, 2001

### CONFIDENTIAL AND INADMISSIBLE SETTLEMENT COMMUNICATION

Craig Melodia  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 5 - 77 West Jackson Boulevard  
Chicago, IL 60604-3590  
Attn: C-14J

Re: Skinner Landfill, West Chester, Ohio

Dear Craig:

I received your letter dated March 20, 2001, addressed to Mike Leik, who is no longer with our firm.

Acme Wrecking Company, Inc. ("Acme") appreciates the opportunity to discuss settlement possibilities with you. However, there is no way that Acme would be willing or able to settle this matter for \$136,000.00.

As set forth in my letter to you dated February 13, 2001, Acme strongly disputes the quantity of waste attributed to Acme in the Final Allocation Report. The volume determined by the Allocator overestimates the number of loads (152 loads) dumped during the 1965-1968 time period (2,280 cys) and, more significantly, it presumes Acme delivered additional loads after that period of time at the rate of 50 loads per year times a multiplier of 5 years (3,750 cys). There is absolutely no basis for adding these additional estimated volumes as there is no evidence that Acme delivered any waste after 1968. The Skinner log has no entries for Acme after 1968, and Acme has no records that would indicate it dumped any waste at the site after 1968.

---

William E. Santen  
Charles M. Meyer†  
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\*Also admitted in FL & MA

Craig Melodia  
April 3, 2001  
Page 2

Furthermore, as I previously indicated, Acme is a small, privately-held minority business enterprise with annual gross revenues of approximately \$1-\$3 million. It simply does not have the wherewithal to consummate a settlement in the amount proposed.

Acme has already incurred significant legal fees in defending this matter, and would like to avoid further legal costs. Without in any way admitting liability in this matter, it would agree to pay the sum of \$50,000.00 as a global settlement, provided said sum could be paid in four (4) quarterly annual installments of \$12,500.00 each, without interest.

We believe that this settlement proposal represents a more realistic assessment of Acme's maximum liability exposure. If you assume that the Allocator's volume estimate of 2,280 (cys) for the period 1965 to 1968 is correct, which Acme disputes, and that there was no dumping after 1968, the volume estimate of 2,280 (cys) is 37.8% of the Allocator's total extrapolated volume of 6,030 (cys). If we multiply the amount of your proposed settlement (\$136,000.00) by 37.8%, it equals \$51,408.00, approximately the settlement amount being offered.

We hope this proposal is acceptable to you. I look forward to hearing your response.

Sincerely,



Charles M. Meyer

CMM:bae

c: Acme Wrecking Company, Inc.